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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34813]

New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corp.–
Corporate Family Transaction Exemption

New York New Jersey Rail LLC (NYNJR) and New York Cross Harbor Railroad Terminal Corp. (NYCH) (collectively, petitioners) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family.¹ Under the proposed transaction, NYCH will transfer its operating rights and common carrier obligations to NYNJR. NYNJR will assume all of NYCH's rights and obligations to provide rail service as a common carrier.

¹ Petitioners originally filed their notice of exemption on December 22, 2005. By decision served on January 10, 2006, the Board, at the request of petitioners, held the proceeding in abeyance until further notice to allow Consolidated Rail Corporation (Conrail) to discuss its concerns with petitioners regarding the effect of the proposed transaction on NYCH's contractual obligations to Conrail. After reaching an agreement with Conrail, petitioners filed an amended notice on February 24, 2006. Subsequently, the New York City Economic Development Corp. (NYCEDC), acting in its capacity as contractor to the City of New York (the City), filed a motion to request that the Board hold the proceeding in abeyance until the City had confirmation from petitioners that the City's rights, pursuant to a permit dated September 1, 1984, would not be compromised, altered or otherwise modified by the proposed transaction. On July 11, 2006, NYCEDC withdrew its request to hold the proceeding in abeyance. By letter filed on July 12, 2006, petitioners indicated that their exemption request is now unopposed and request that the Board proceed with notice of the proposed transaction.

NYCH, a Class III short line railroad, owns, leases and operates railroad tracks and facilities at Greenville, NJ,² Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor. NYNJR is a newly formed limited liability company established and owned by Mid Atlantic New England Rail, LLC (MANER),³ an entity owned and controlled by Gordon Reger (Mr. Reger), a noncarrier individual. Entities controlled by Mr. Reger own a majority of NYCH's outstanding stock and, by reason of that ownership, indirectly control NYCH. Mr. Reger currently controls one other short line railroad, New Amsterdam & Seneca Railroad Company, LLC.⁴

The transaction was scheduled to be consummated on or after March 3, 2006 (7 days after the amended notice of exemption was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to the parties, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family. Petitioners state that the proposed corporate changes will be limited to entities controlled

² NYCH leases Conrail's Greenville Yard, pursuant to an agreement dated December 15, 2002.

³ MANER established NYNJR to facilitate the acquisition of and/or investment in short line and regional railroad companies, such as NYNJR.

⁴ See Gordon Reger–Continuance in Control Exemption–New Amsterdam & Seneca Railroad Company, LLC, STB Finance Docket No. 34825 (STB served Feb. 23, 2006).

by Mr. Reger.⁵ Petitioners also state that the proposed transfer of NYCH's rights and obligations to NYNJR will facilitate better access to equity and debt capital which will enable the improvement of the Greenville, NJ, and Brooklyn, NY rail yards and the condition of NYCH's equipment, create a safer working environment for railroad employees, and increase the railroad's ability to serve the freight transportation needs of the public in the New York, New Jersey, New England, and Mid Atlantic markets.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the amended verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34813, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on

⁵ NYCH states that it will not transfer to NYNJR its Greenville Yard lease until it obtains Conrail's consent. Furthermore, NYCH's ability to transfer its assets to NYNJR is subject to the terms of its 2002 Greenville Yard lease with Conrail and its settlement agreement with Conrail.

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Decided: July 21, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary